IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SECOND DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 12816 of 2004

Between:

S.S.Misra, S/o Late Artatrana Mishra,
Commissioner of Income Tax (Rajahmundry),

New Appeals-II, III Floor, Aayakar Bhavan,
Basheerbagh, Hyderabad

..... PETITIONER

AND

1. The Senior Accounts Officer,

Zonal Accounts Office, Aayakar Bhavan,
Basheerbagh, Central Board of Direct Taxes, Hyderabad
2. The Principal Chief Controller of Accounts,

Central Board of Direct Taxes, 9th Floor,
Lok Nayak Bhavan, Khan Market, New Delhi
3 The Deputy Controller of Accounts,

Central Board of Taxes, Chennai

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in disallowing the additional to & fro fare and set aside the orders dated 24-4-2002 and No.F2(50) TA-

LTC/CBDT/CDN/2002-03/1850-51 dated 1-11-2002 as arbitrary, illegal and contrary to rules and discrimination including the judgment dated 1-1-2004 in O.A.No.1542/02 of the Central Administrative Tribunal and consequently direct the respondents to pay an amount of Rs.6,135 towards additional to & fro fare with an interest of 18% and pass such further or other orders as this Hon'ble Court may deem fit

Counsel for the Petitioner: MR.M.KESAVA RAO

Counsel for the Respondents : MR.A.RAJASHEKAR REDDY (SC FOR CG)

The Court made the following:

ORDER: (PER JC,J)

Aggrieved by the order passed by the Central Administrative Tribunal, Hyderabad in O.A.No.1542 of 2002, dated 01-01-2004, the unsuccessful applicant therein, preferred the present Writ Petition.

2. The writ petitioner is a Commissioner of Income Tax. Earlier he worked in Mumbai and thereafter he was transferred to Hyderabad some time prior to 16-07-2001. Pursuant to the orders of transfer, he reported to duty on 16.07.2001. Subsequently, his son joined him on 26-07-2001 and his wife on 13-08-2001.

3. The case of the petitioner is that as he was not allotted residential quarters, he could not shift his belongings from Mumbai to Hyderabad immediately. Therefore, on 5-12-2001 he again went to Mumbai for the purpose of collecting his belongings and returned to Hyderabad on
30-12-2001.

4. The petitioner claimed T.A. and D.A., to which he is entitled pursuant to the transfer, and on 05-11-2001 the necessary payment in that regard was admittedly made. The petitioner once again claimed certain additional allowances in connection with his visit to Mumbai between 05.12.2001 and 30.12.2001. As the respondents disallowed the claim of the petitioner, the petitioner approached the Central Administrative Tribunal by way of above mentioned O.A. The Tribunal by the impugned order dated 1-1-2004 dismissed the O.A. Hence, the present Writ Petition.

4. The learned counsel for the petitioner brought to our notice certain instructions regarding the entitlement of allowances in the case of transfer of Officers, such as the petitioner herein. The relevant instructions, which are extracted in the impugned order, read as follows:

"VI. Additional to and fro fare by entitled class to Govt., servant on transfer – An employee will be entitled to an additional fare by the entitled class for both onward and return journey in addition to the normal transfer travelling allowance entitlement if he has to leave his family behind because of nonavailability of Govt., residential accommodation at the new place of posting.

(G.T., M.F…O.M. No.19030/5/86-E. IV dated the 24th November, 1986; the 19th March, 1987 and the 6th August, 1987)

Clarification – (i) In cases where the Govt., accommodation is available and the Officer does not accept the Govt., accommodation allotted to him on the ground of being of lower category or for any other reason, he is not entitled to the additional fare in terms of Para 7 of O.M. dated
24-11-1986 as the Govt., accommodation is available and the officer had refused it.

(ii) When a govt., servant brings family before actual allotment in such cases, if TA/DA has been claimed for such family members there is no family left behind and additional fare cannot be made admissible."

5. A reading of the above mentioned instructions shows that an employee is entitled to receive an additional to and fro fare in addition to the normal travelling allowances. Before an employee becomes entitled to the same two conditions are required to be satisfied (1) that the employee left his family behind and proceeded to the station of transfer and (2) that leaving of family behind him is by reason of the non-availability of Governmental residential accommodation at the place of transfer. The entitlement for such additional fare is a consequence where both the above-mentioned conditions are satisfied.

6. Clarification (ii) of the above mentioned extract makes the situation more clear; it positively declares where the employee brings the family before actual allotment of the residential quarter and if TA/DA has already been claimed for such family members, no further claim is admissible.

7. In the present case, admittedly, the members of the family joined the petitioner by the date of his visit to Mumbai i.e., 05-12-2001 and TA/DA to the members of the family of the petitioner was already paid on 5-11-2001.

8. The learned counsel for the petitioner argued that the expression “family” in the above instructions must be understood to mean not only the natural persons but also the family belongings left behind.

9. No established principles of statutory interpretation are brought to our notice to put such a construction on the language of the above-mentioned instructions. We ‘deeply regret’ our inability to accept the contention of the learned counsel. We see no reason to interfere with the impugned order. The writ petition is devoid of any merit and therefore the same is dismissed.

8. The Writ Petition is dismissed at the admission stage. No order as to costs.

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J.CHELAMESWAR, J

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GODA RAGHURAM, J

VA

Date: 22.07.2004

To

1. The Registrar, Central Administrative Tribunal, Hyderabad.

2. The Senior Accounts Officer,

Zonal Accounts Office, Aayakar Bhavan,
Basheerbagh, Central Board of Direct Taxes, Hyderabad

3. The Principal Chief Controller of Accounts,

Central Board of Direct Taxes, 9th Floor,
Lok Nayak Bhavan, Khan Market, New Delhi

4 The Deputy Controller of Accounts,

Central Board of Taxes, Chennai

5. Two C.D. Copies.